IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition no. 3138 of 2005

Fayim Salim Memon ....Petitioner

Vs.

The Secretary,
Home Department, Mantralaya,
Mumbai & others. ....Respondents

Shri J.N. Pawar for the Petitioner
Shri A.S. Shitole, APP for State

CORAM: S.C. Dharmadhikari, J
13th April, 2007.

P.C.

By this Petition under Article 226 of Constitution of India, the Petitioner is challenging the order of externment of Petitioner from Nasik city limits, Nasik rural area for a period of 2 years w.e.f. 12-8-2005. The order of externment has been confirmed by the Appellate authority.

2. Mr. Pawar appearing for the Petitioner externee has raised several contentions. After inviting my attention to the impugned order and the show-cause notice he states that the cases which have been referred to are old and stale. The first case is of 1997. The 2nd case is of 2002 and that too arising out of a fight between family members. The step brother and step mother of Petitioner have involved him in a criminal case. However, these are fights arising out of some borrowing and debts between family members. The 4th case is of 2004 and according to Shri Pawar it is totally false and bogus. The 5th and the last criminal case cannot be said to be of any consequence because it is under section 125 of the Bombay Police Act, 1951.

3. The learned APP has controverted these submissions and contended that the cases are not old and stale as alleged. The Petitioner was of 24 years of age at the relevant time and was involved in cases of assault, theft and robbery. His record is not clean. He has terrorized people who were residing in the area. In such circumstances this Court should not interfere.

4. Having heard learned counsel appearing for the parties and

finding prima-facie substance in the contention of Shri Pawar that full opportunity of being heard was not given to the Petitioner by the Externment Authority so also considering the fact that the Petitioner was externed for a period of 2 years w.e.f. August 2005, which period has been substantially undergone, this is a fit case for interfering with the order of the Externment Authorities. The Petitioner has stayed out and removed himself from the concerned areas from 12-8-2005 uptil now. The Externment period was of 2 years. Now very brief period remains to be completed and undergone. In such circumstances, the order under challenge is set aside. Rule is made absolute in terms of prayer clause (a).

(S.C. DHARMADHIKARI J)